adjoining owner who brought an action of ejectment to recover possession of the strip of land thus encroached upon. *Held,* that the action could be maintained. *McDivitt v. Bronson* (1917, Neb.) 163 N. W. 761.

See COMMENTS, p. 265.

EQUITY JURISDICTION—CORPORATIONS—INTERNAL AFFAIRS OF A FOREIGN CORPORATION.—A bill was filed by the minority stockholders of a foreign corporation to prevent a majority of the directors from winding up the business and selling the corporate property to another company, in which the defendant directors owned nearly all the stock. *Held,* that the relief asked for might properly be given, even though it involved an interference with the internal affairs of a foreign corporation. *Corry v. Barre Granite and Quarry Co.* (1917, Vt.) 101 Atl. 38.

The rule has been laid down very generally, and is often very broadly stated, that a court of equity will not attempt to exercise jurisdiction over the internal affairs of a foreign corporation. *Howell v. Chicago R. R.* (1868 N. Y. Sup. Ct.) 51 Barb. 378; *Van Dyke v. Railway Mail Assoc.* (1912) 118 Minn. 390, 137 N. W. 15. It is the modern tendency to limit the application of this rule. Some courts have accomplished this by narrowing the definition of internal affairs. *Guilford v. Western Union Tel. Co.* (1894) 59 Minn. 332, 61 N. W. 324. Cf. *North State Copper Min. Co. v. Field* (1885) 64 Md. 151, 20 Atl. 1039. The true rule is not one of jurisdiction, strictly speaking, but one of sound judgment and discretion, depending on the facts in each case. *Babcock v. Farwell* (1910) 245 Ill. 14, 91 N. E. 683; *Ives v. Smith* (1888, Sup. Ct.) 3 N. Y. Supp. 645, 651. Two sound reasons for applying the rule are the practical difficulty of enforcing the decree effectively against a foreign corporation, and the danger of confusion through opposite decisions, in different jurisdictions, on the same right in the case of different individuals. *Kimball v. St. Louis R. R.* (1892) 157 Mass. 7, 31 N. E. 697; *Madden v. Electric Light Co.* (1897) 181 Pa. St. 617, 37 Atl. 817. Where these two reasons do not apply the court may well proceed. On this ground the decision in the principal case seems sound.

EQUITY—LACHES—PURSUING MISTAKEN REMEDIES FOR 25 YEARS.—The defendant company was charged with using its control of the majority of the stock of a railroad corporation to gain an inequitable advantage over the minority stock holders. A series of legally misdirected and unsuccessful suits were brought by the minority stock holders who finally filed the present bill 25 years after the cause of action had arisen, in which for the first time they were held to have conceived their remedy correctly. *Held,* that the suit was not barred by laches. *Bogert v. Southern Pacific Co.* (1917, C. C. A. 2d) 244 Fed. 61.

The general rule followed in state courts is that where equity and law have concurrent jurisdiction the statute of limitations is a bar in equity. *Tucker v. Linn* (1904, N. J. Ch.) 57 Atl. 1017. Apparently where equitable jurisdiction is exclusive, except where the statute expressly applies to equitable proceedings, state courts act only on analogy. Wood, *Limitations* (4th ed.) sec. 59; see *Hall v. Law* (1880) 102 U. S. 46, 26 L. Ed. 217. In both state and federal courts, in cases where equitable jurisdiction is exclusive and where unusual conditions make it inequitable to forbid the maintenance of a suit even though a longer period than that fixed by the statute of limitations has elapsed, the question whether laches will bar the complaint will be determined by the equities which condition it. *Kelley v. Boettcher* (1898, C. C. A. 8th) 85 Fed. 55, 62; *Stevens v. Grand Central Min. Co.* (1904, C. C. A. 8th) 133 Fed. 28. The better

rule is that laches is not mere delay but delay that works a disadvantage or change of position. *Chase v. Chase* (1897) 20 R. I. 207, 37 Atl. 804. Pomeroy, *Eq. Rem.* secs. 20-23 and note to sec. 23. The pendency of another action relating to the same matter is frequently accepted as an excuse to overcome the defense of laches. *Schaefer v. City of Fond du Lac* (1899) 104 Wis. 39, 80 N. W. 59; *Williams v. Neeley* (1904, C. C. A. 8th) 134 Fed. 1. Where there had been continuous litigation for 20 years in various suits and proceedings against the defendant upon the question in issue, the complainant has been held not to be chargeable with laches. *Pacific R. Co. v. Boyd* (1913, C. C. A. 9th) 177 Fed. 804, 822. Cases where actions have been maintained after so long a period are unusual, yet, where such delay has not been prejudicial, and constant effort has been made in the meantime to obtain relief, there seems to be no sound reason why relief should not be given in equity.

R. L. S.

EQUITY—MANDATORY INJUNCTION—ENCROACHMENT OF FOUNDATION WALL BELOW THE SURFACE.—After the plaintiff had procured a judgment in an action of ejectment by reason of the encroachment of the defendant's foundation wall below the surface, and had had execution issued thereon, the sheriff failed to remove the encroaching wall because the existing conditions made such removal impossible without trespassing on the defendant's land. Thereupon the plaintiff applied for a mandatory injunction to compel the defendant himself to remove the obstruction. *Held,* that the injunction should issue. *Hirschberg v. Flusser* (1917, N. J. Ch.) 101 Atl. 191.

See COMMENTS, p. 265.

EQUITY—SPECIFIC PERFORMANCE—MUTUALITY—PLAINTIFF HAVING OPTION TO TERMINATE LEASE.—The plaintiff was assignee of an oil lease which gave the lessee an option to terminate the lease at any time on payment of $1. The lessors, being dissatisfied, undertook to declare the lease forfeited, and executed a second lease of the same kind to other parties. The plaintiff sought to enjoin the lessors and the new lessees from entering on the land in alleged violation of the covenants in his lease. *Held,* that the plaintiff was not entitled to an injunction to prevent such breach, because the contract was not mutual. *Advance Oil Co. v. Hunt et al.* (1917, Ind.) 116 N. E. 340. See COMMENTS, p. 261.

EVIDENCE—ADMISSION OF LIABILITY.—In an action arising from a collision between the defendant's automobile, driven by his son, and the plaintiff's team, the only evidence given to show that the necessary relation of master and servant existed between the father and son was the admission of the father that "so far as the liability extended, he was responsible." *Held,* that this admission of liability was a direct admission of facts essential to establish his legal liability. *Farnham v. Clifford* (1917, Me.) 101 Atl. 468.

The admission of the defendant is a conclusion arrived at by the process of reasoning, applying the rules of law to the totality of non-legal facts. Such a conclusion is commonly called a conclusion of law, though more correctly termed a conclusion of mixed law and fact. An admission of law made by a party will not be noticed by the court, the determination of the rules of law being for the court and not for the parties. *Polk's Lessee v. Cockrel* (1809) 1 Tenn. 456. It has been held that an admission of liability, since it involves a question of law as well as of fact, falls within the same rule and is inadmissible. *Crockett v. Morrison* (1847) 11 Mo. 3. But the majority of cases would allow